



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 03 2001

Memorandum

To: Personnel Officer, Bureau of Land Management
Personnel Officer, U.S. Fish and Wildlife Service
Personnel Officer, National Parks Service
Personnel Officer, Bureau of Indian Affairs
Personnel Officer, Office of Aircraft Services

From: Carolyn Cohen *Carolyn Cohen*
Director, Office of Personnel Policy

Subject: Overtime Pay and Maximum Earnings Limitation for Employees Engaged in Fire Suppression Activities

This memorandum provides guidance regarding recent overtime pay legislation applicable to wildland firefighters. This guidance has been coordinated with your bureau's fire director, the Department's Office of the Wildland Fire Coordinator and the United States Forest Service.

Public Law 106-558, signed December 21, 2000, requires employees of the Department of the Interior and the United States Forest Service, whose overtime pay is calculated under rules established in title 5, United States Code, section 5542(a), to be paid at a rate equal to one and one-half times their hourly rate of basic pay when they are engaged in "emergency wildland fire suppression activities." Prior to this law the overtime pay rate was restricted to that calculated at the GS-10, step 1 level. Originally, the new law was to become effective with appropriations authorized on or after January 28, 2001. However, Public Law 107-20, signed July 24, 2001, made the new law retroactively effective to December 21, 2000. Neither of these laws, however, changed the maximum earnings limitation rule that limits an employee's basic and premium pay to the annual salary of the maximum step of the GS-15 grade level, including locality and/or special salary rate pay. However, the conditions under which this overtime rate of pay is authorized does meet the emergency situation described in title 5, Code of Federal Regulations (CFR), section 550.106(a), and for that reason, employees authorized overtime pay under pay code 113, discussed later in this memorandum, will be paid under the annual maximum earnings limitation described in 5 CFR 550.106 (c) instead of under the bi-weekly limitation described in section 550.105(a).

In interpreting and applying the new law, the agencies are guided by discussions between the fire program directors, the Administration, and Congress. Accordingly, the new overtime pay provision will apply only under the following circumstances:

1. Those assigned to emergency wildland fire activities (including wildland fire use) whose overtime work is exempt from coverage under the Fair Labor Standards Act (FLSA).
2. Those involved in the preparation and approval of a Burned Area Emergency Stabilization and Rehabilitation Plan (ESR) whose overtime hours worked are exempt from coverage under the FLSA. The new overtime provision will apply only until the initial ESR plan is submitted for approval.
3. Those required to augment planned preparedness staffing levels to enhance short term suppression response capability, severity activities, accident or after action reviews or emergency wildland fire funded prevention activities, whose overtime hours worked are exempt from coverage under FLSA.
4. Those involved in similar wildland fire activities that are approved for coverage on a case-by-case basis by an agency fire director.
5. In order to qualify for the new pay provision, an employee's overtime work must be charged to wildland fire, ESR, severity, or wildland fire suppression funds tied to the support of suppression operations and that overtime work must be recorded on a time sheet approved by an appropriate supervisor.

The new overtime pay provision does not apply to personnel involved in prescribed fire, other fuels management activities, implementation of fire rehabilitation plans, or to overtime incurred in conjunction with any other activity not specified above.

A new pay code, 113 - Fire Fighter Overtime - Regular Unscheduled, was established to record hours that are to be paid under the new overtime pay rules. Earlier guidance on this pay code was disseminated to timekeepers by the National Business Center's Payroll Operations Division. We ask that you disseminate this guidance within your bureau and re-emphasize that pay code 113 may only be used to record overtime hours as provided for in this memorandum. As stated above, use of pay code 113 authorizes employees to be paid under the annual rather than the bi-weekly maximum earnings limitation. We will work with the Payroll Operations Division and the Federal Personnel and Payroll System (FPPS) to create a system change that will automatically effect that change whenever pay code 113 is used. However, until such a system change can be effected, timekeepers must continue to input the code that allows employees to be paid under the annual rather than the bi-weekly maximum earnings limitation.

We are currently working with representatives from the bureaus, the National Interagency Fire Center, the Federal Personnel and Payroll System (FPPS) and the Payroll Operations Division to determine the most efficient and effective means to calculate and disburse the retroactive overtime pay. Those discussions are ongoing. More information will be provided once the process is determined.

The Office of Personnel Policy point of contact for this action is Jim Tingwald. He can be reached by telephone at (202) 208-6755 or by email at Jim_Tingwald@ios.doi.gov.

cc: Bureau Directors
Office of the Wildland Fire Coordinator
Chief, Payroll Operations Division